

² The Board notes that, following the April 20, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On July 13, 2017 appellant, then a 36-year-old special agent, filed a traumatic injury claim (Form CA-1) alleging that on May 18, 2017 he heard and felt a pop in his lower back while he was performing squats in the weight room, while in the performance of duty. He did not stop working.

In a report dated May 19, 2017, Walter McDaniel, a registered nurse (RN) and Cheryl O'Donoghue, a nurse practitioner (NP-BC), noted appellant's examination findings and diagnosed thoracolumbar strain. In reports dated May 22 and June 29, 2017, F. Fuller, an RN and Ms. O'Donoghue diagnosed back strain. On May 23, 2017 Mr. McDaniel and Mike Carter, a registered practical nurse, diagnosed low back strain and referred appellant to an orthopedist.

In a report dated May 30, 2017, Dr. Ralph W. Morales, Board-certified in orthopedic surgery, related that he had examined appellant and administered a magnetic resonance imaging (MRI) scan. He diagnosed lumbar canal stenosis and low back strain.

On July 7, 2017 Diana L. Clark, an RN, and Ms. O'Donoghue noted appellant's examination findings and related that he had a "compromised musculoskeletal system."

By development letter dated July 24, 2017, OWCP informed appellant that the evidence of record was insufficient to establish his traumatic injury claim. It advised him of the type of medical and factual evidence needed and provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence.

In report dated July 6, 2017, Dr. Michael Dunn, Board-certified in hand surgery and orthopedic surgery, noted appellant's physical examination findings and diagnosed lumbar disc disease in addition to the lumbar canal stenosis and low back strain.

By decision dated August 30, 2017, OWCP denied appellant's claim because the medical evidence submitted did not demonstrate that the claimed medical condition was related to the accepted employment incident.

On April 17, 2018 appellant requested reconsideration of OWCP's August 30, 2017 decision. In support of his request for reconsideration, he submitted an expense report and per diem expense report.

By decision dated April 20, 2018, OWCP denied appellant's request for reconsideration on the merits of his claim pursuant to 5 U.S.C. § 8128(a). It found that the evidence submitted in support of his reconsideration request was irrelevant or immaterial with regard to the issue of whether his back condition was causally related to his accepted employment incident of May 18, 2017.

LEGAL PRECEDENT

Section 8128(a) of FECA vests OWCP with discretionary authority to determine whether to review an award for or against compensation. OWCP may review an award for or against payment of compensation at any time based on its own motion or on application.³

A claimant seeking reconsideration of a final decision must present arguments or provide evidence which: (1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by OWCP; or (3) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁴ If OWCP determines that at least one of these requirements is met, it reopens and reviews the case on its merits.⁵ If the request is timely, but fails to meet at least one of the requirements for reconsideration, OWCP will deny the request for reconsideration without reopening the case for review on the merits.⁶

The Board has held that the submission of evidence or argument which repeats or duplicates evidence or argument already in the case record⁷ and the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.⁸

ANALYSIS

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

With his timely request for reconsideration, appellant neither showed that OWCP erroneously applied or interpreted a specific point of law, nor advanced a relevant legal argument not previously considered by OWCP. Consequently he is not entitled to review of the merits of his claim based on the first and second above-noted requirements under 20 C.F.R. § 10.606(b)(3).

An appellant may be entitled to a merit review by submitting relevant and pertinent new evidence, but the Board finds that appellant has not submitted any such evidence in this case.⁹ Appellant only submitted an expense report and a per diem allowance report with his request for reconsideration. The submission of this factual evidence does not require reopening of his claim

³ *K.B.*, Docket No. 18-1392 (issued January 15, 2019); 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.606(b)(3); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, Docket No. 08-1569 (issued December 9, 2008).

⁵ *Id.* at § 10.608(a); *see also C.K.*, Docket No. 18-1019 (issued October 24, 2018).

⁶ *K.B.*, *supra* note 3; *Id.* at § 10.608(b); *E.R.*, Docket No. 09-1655 (issued March 18, 2010).

⁷ *C.B.*, Docket No. 18-1108 (issued January 22, 2018); *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Jerome Ginsberg*, 32 ECAB 31, 33 (1980).

⁸ *C.B.*, *id.*; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁹ *B.T.*, Docket No. 18-1397 (issued January 15, 2019); 20 C.F.R. § 10.606(b)(3); *see also M.S.*, Docket No. 18-1041 (issued October 25, 2018); *C.N.*, *supra* note 4.

for review of the merits of the claim because this evidence is irrelevant to the underlying issue of causal relationship. As noted, the underlying issue of the present case is medical in nature, *i.e.* whether appellant submitted medical evidence sufficient to establish causal relationship between a diagnosed medical condition and the accepted May 18, 2017 employment incident. The Board has held that the submission of evidence or argument which does not address the particular issue involved does not constitute a basis for reopening a case.¹⁰ Thus, appellant is also not entitled to a review of the merits of his claim based on the third above-noted requirement under 20 C.F.R. § 10.606(b)(3).

The Board accordingly finds that appellant has not met any of the requirements of 20 C.F.R. § 10.606(b)(3). Pursuant to 20 C.F.R. § 10.608, OWCP properly denied merit review.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of her claim pursuant to 5 U.S.C. § 8128(a).

ORDER

IT IS HEREBY ORDERED THAT the April 20, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 3, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *B.T., id.*; *Edward Matthew Diekemper, supra* note 8.